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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
09 AT SEATTLE

10 JAMES BATTLE,) CASE NO. C05-1365-TSZ-MAT
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12 Plaintiff,)
13)
14 v.) REPORT AND RECOMMENDATION
15 STATE OF WASHINGTON, et al.,)
16)
17 Defendants.)
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27 Plaintiff presented to this Court for filing a proposed civil rights complaint under 42 U.S.C.
28 § 1983. (Dkt. 1.) In the case caption, plaintiff names the “State of Washington; Department of
29 Corrections” and “Reynolds Work Release” as defendants. In the body of the complaint, plaintiff
30 also lists Debra Holly, Chris Baker, Tonya Wick, and West Central Records Office as defendants.
31 The proposed complaint raises issues regarding plaintiff’s confinement by the Department of
32 Corrections. He seeks release from custody and monetary relief. Plaintiff also presented an
33 application to proceed *in forma pauperis*. (Dkt. 1.) However, as discussed below, the Court
34 recommends that plaintiff’s application to proceed *in forma pauperis* be denied and this action
35 dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) based upon plaintiff’s failure
36 to adequately allege a cause of action under § 1983.

37 Where a prisoner challenges the fact or duration of his confinement, his sole federal remedy
38 is a writ of habeas corpus, to which the exhaustion requirement applies. *Preiser v. Rodriguez* 411

01 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990). Further, in *Heck*
 02 *v. Humphrey*, the United States Supreme Court held as follows:

03 [I]n order to recover damages for allegedly unconstitutional conviction or
 04 imprisonment, or for other harm caused by actions whose unlawfulness would render
 05 a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or
 06 sentence has been reversed on direct appeal, expunged by executive order, declared
 07 invalid by a state tribunal authorized to make such determination, or called into
 08 question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.
 09 A claim for damages bearing that relationship to a conviction or sentence that has *not*
 10 been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks
 11 damages in a § 1983 suit, the district court must consider whether a judgment in favor
 12 of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if
 13 it would, the complaint must be dismissed unless the plaintiff can demonstrate that the
 14 conviction or sentence has already been invalidated.

15 512 U.S. 477, 486-87 (1994) (footnote omitted).

16 Here, plaintiff's assertion that the named defendants violated his constitutional rights by
 17 unlawfully incarcerating him constitutes a challenge to the fact and/or duration of his confinement
 18 – a challenge properly pursued through a writ of habeas corpus. *See Preiser*, 411 U.S. at 489-90.
 19 Therefore, plaintiff's § 1983 claim must be dismissed unless he can demonstrate that his conviction
 20 or sentence has already been invalidated. *Heck*, 512 U.S. at 486-87. Here, plaintiff makes no
 21 allegation or showing that his confinement has been invalidated or impugned in any respect.
 22 Accordingly, plaintiff's claim for damages is not cognizable under § 1983.¹ *Heck*, 512 U.S. at
 23 486-87.

24 A district court should not convert a defective § 1983 claim into a petition for a writ of
 25 habeas corpus unless it is clear that the plaintiff intends to bring a habeas petition. *Trimble v. City*
 26 *of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995). Instead, the district court should dismiss the
 27 § 1983 claims without prejudice. *Id.*

28 Therefore, the Court recommends that plaintiff's application to proceed *in forma pauperis*

29 ¹ It should also be noted that plaintiff may not bring a claim against the State of
 30 Washington under 42 U.S.C. § 1983 because states are not regarded as "persons" subject to suit
 31 under that statute. *See, e.g., Hale v. Arizona*, 993 F.2d 1387, 1398 (9th Cir. 1993).

01 be denied and his § 1983 action be dismissed without prejudice pursuant to § 1915(e)(2)(B). A
02 proposed order accompanies this Report and Recommendation.

03 DATED this 8th day of August, 2005.

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06 Mary Alice Theiler
07 United States Magistrate Judge
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